

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

CABE BROTHERS RENTALS, LLC, a California Limited Liability Company; CABE BROTHERS, a California Corporation; and Does 1 through 50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MARIA G. GONZALEZ ROMERO, an individual, on behalf of herself, and on behalf of all other aggrieved employees

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Los Angeles Superior Court, Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER: 22STCV18688
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-829

JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 06/07/2022

(Fecha)

Clerk, by Sherri R. Carter Executive Officer / Clerk of Court, Deputy
(Secretario) H. Flores-Hernandez (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

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Attorneys for Plaintiff MARIA G. GONZALEZ ROMERO

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**

MARIA G. GONZALEZ ROMERO, an
 individual, on behalf of herself, and on behalf
 of all other aggrieved employees,

PLAINTIFFS,

vs.

CABE BROTHERS RENTALS, LLC, a
 California Limited Liability Company; CABE
 BROTHERS, a California Corporation; and
 Does 1 through 50, Inclusive,

DEFENDANTS.

Case No.: 22STCV18688

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT AT LABOR CODE SECTIONS 2698, et seq.

1 Plaintiff MARIA G. GONZALEZ ROMERO (“PLAINTIFF”) on behalf of the people of
2 the State of California and as “aggrieved employees” acting as a private attorney general under
3 the Labor Code Private Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges
4 on information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against CABA BROTHERS RENTALS, LLC and
8 CABA BROTHERS (collectively “DEFENDANTS”) seeking only to recover PAGA civil
9 penalties for herself, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations in this action, but simply the civil penalties permitted by California
14 Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning her right to pursue her
15 individual claims for, *inter alia*, DEFENDANTS’ alleged wage violations, and/or general or
16 special damages arising from those violations, and she fully intends to, at a future date, pursue
17 claims for those individual claims and damages.

18 2. California has enacted the PAGA to permit an individual to bring an action on
19 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
20 nature of this action.

21 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
22 DEFENDANTS’ violations under PAGA and solely for the relief as permitted by PAGA – that
23 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
24 complaint should be construed as attempting to obtain any relief that would not be available in a
25 PAGA-only action.

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THE PARTIES

4. Defendant CABE BROTHERS RENTALS, LLC. (“Defendant Cabe Brothers Rentals”) is a California limited liability corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

5. Defendant CABE BROTHERS (“Defendant Cabe Brothers Rentals”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

6. Defendants Cabe Brothers Rentals and Defendant Cabe Brothers were the joint employers of PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein, and are therefore collectively referred to herein as "DEFENDANT" and/or “DEFENDANTS.”

7. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendant named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

8. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the DEFENDANTS, and personally participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged herein. Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are jointly and severally liable to PLAINTIFF

1 and those similarly situated, for the loss sustained as a proximate result of the conduct of the
2 DEFENDANTS' agents, servants and/or employees.

3 9. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
4 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or
5 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
6 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
7 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
8 at all relevant times.

9 10. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
10 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
11 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
12 employee a wage less than the minimum fixed by California state law, and as such, are subject to
13 civil penalties for each underpaid employee.

14 11. PLAINTIFF was employed by DEFENDANTS in California from December of
15 2016 to June of 2021 and worked at times for DEFENDANTS as a non-exempt employee, paid
16 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
17 minimum and overtime wages due for all time worked. PLAINTIFF also worked at times for
18 DEFENDANTS as a commission-based sales employee entitled to be separately compensated for
19 her non-productive time, including rest periods.

20 12. PLAINTIFF, and such persons that may be added from time to time who satisfy
21 the requirements and exhaust the administrative procedures under the Private Attorney General
22 Act, bring this Representative Action on behalf of the State of California with respect to herself
23 and all non-exempt, exempt, commission-base and/or piece-rate employees who worked for
24 Defendant Cabe Brothers Rentals and/or Defendant Cabe Brothers in California (the
25 "AGGRIEVED EMPLOYEES") during the time period of December 15, 2020 until the present
26 (the "PAGA PERIOD").

27 13. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
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1 or formerly employed by DEFENDANTS during the PAGA PERIOD, brings this representative
2 action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANTS' violation of
3 California Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7,
4 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, & 2804 and
5 the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED
6 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

7 **JURISDICTION AND VENUE**

8 14. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure, Section 410.10.

10 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,
11 Sections 395 and 395.5, because DEFENDANTS (i) currently maintains and at all relevant times
12 maintained offices and facilities in this County and/or conducts substantial business in this
13 County, and (ii) committed the wrongful conduct herein alleged in this County against
14 PLAINTIFF and the AGGRIEVED EMPLOYEES.

15 **THE CONDUCT**

16 16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
17 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning
18 the time during which an employee is subject to the control of an employer, including all the time
19 the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and
20 AGGRIEVED EMPLOYEES to work without paying them for all the time they are under
21 DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work
22 while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
23 is from time to time interrupted by work assignments while clocked out for what should be
24 PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established company policy
25 and procedure, administers a uniform practice of rounding the actual time worked and recorded
26 by PLAINTIFF and AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so
27 that during the course of their employment, PLAINTIFF and C AGGRIEVED EMPLOYEES are
28 paid less than they would have been paid had they been paid for actual recorded time rather than

1 “rounded” time. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit
2 minimum wage, overtime wage compensation, and off-duty meal breaks by working without their
3 time being correctly recorded and without compensation at the applicable rates. DEFENDANT’s
4 policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
5 worked, is evidenced by DEFENDANT’s business records.

6 **A. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
7 **and Sick Pay**

8 17. State law provides that employees must be paid overtime at one-and-one-half
9 times their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES were
10 compensated at an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was
11 tied to specific elements of an employee’s performance and/or commissions.

12 18. DEFENDANTS’ non-discretionary commission and bonus program provided the
13 AGGRIEVED EMPLOYEES, including PLAINTIFF, with commissions and/or bonus
14 compensation when the employees met the various performance goals set by DEFENDANT.
15 However, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and
16 the AGGRIEVED EMPLOYEES worked overtime and earned non-discretionary bonus and/or
17 commission wages, DEFENDANT failed to accurately include the non-discretionary bonus
18 compensation and/or commission wages as part of the employees’ “regular rate of pay.”

19 19. Management and supervisors described the bonus and commissions programs and
20 commission compensation program to potential and new employees as part of the compensation
21 package for new and used car salespersons including PLAINTIFF and the AGGRIEVED
22 EMPLOYEES. As a matter of law, the incentive and commission compensation received by
23 PLAINTIFFS and other AGGRIEVED EMPLOYEES must be included and correctly calculated
24 into the “regular rate of pay” for purposes of overtime compensation and sick pay.
25 DEFENDANT’s failure to do so has resulted in DEFENDANT’s systematic underpayment of
26 overtime compensation and sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES.
27 Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees
28 shall be calculated in the same manner as the regular rate of pay for the workweek in which the

1 employee uses paid sick time, whether or not the employee actually works overtime in that
2 workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive
3 compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in
4 violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor
5 Code Sections 201, 202, 203 and/or 204.

6 20. In violation of the applicable sections of the California Labor Code and the
7 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
8 matter of company policy, practice and procedure, intentionally and knowingly failed to
9 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate of pay for
10 all overtime, meal and rest period premiums, and sick pay. This uniform policy and practice of
11 DEFENDANTS is intended to purposefully avoid the payment of the correct overtime and, meal
12 and rest period premiums, and sick pay as required by California law which allowed
13 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied
14 with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
15 EMPLOYEES members against DEFENDANTS, the PAGA PERIOD should be adjusted
16 accordingly.

17 **B. Commission-Based and Piece-Rate Violations**

18 21. From time-to-time during the PAGA PERIOD, PLAINTIFF and the
19 AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis. In those
20 instances where PLAINTIFF and the AGGRIEVED EMPLOYEES were paid in part on a
21 commission and/or piece-rate basis, PLAINTIFF and the AGGRIEVED EMPLOYEES were
22 entitled to be separately compensated for all non-productive time at an hourly rate that is no less
23 than the applicable minimum wage. Notwithstanding, in those instances where PLAINTIFF and
24 the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-rate basis,
25 DEFENDANT failed to separately compensate PLAINTIFF and the AGGRIEVED
26 EMPLOYEES for all non-productive time, including but not limited to, paid rest periods, at an
27 hourly rate that is no less than the applicable minimum wage. As a result, PLAINTIFF and the
28 AGGRIEVED EMPLOYEES forfeited minimum wages and overtime wages by

1 DEFENDANT’S failure to separately compensate their non-productive time at an hourly rate that
2 is no less than the applicable minimum wage.

3 **C. Meal and Rest Period Violations**

4 22. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
5 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and
6 were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
7 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT for
8 more than five (5) hours during some shifts without receiving a meal break. Further,
9 DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES
10 with a second off-duty meal period for some workdays in which these employees were required
11 by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged in the practice of
12 rounding the meal period times to avoid paying penalties to PLAINTIFF and other AGGRIEVED
13 EMPLOYEES. PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeit meal
14 breaks without additional compensation and in accordance with DEFENDANT’s corporate policy
15 and practice.

16 23. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
17 were also required from time to time to work in excess of four (4) hours without being provided
18 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
19 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
20 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between
21 six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
22 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF
23 and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu
24 thereof. Additionally, the applicable California Wage Order requires employers to provide
25 employees with off-duty rest periods, which the California Supreme Court defined as time during
26 which an employee is relieved from all work-related duties and free from employer control. In so
27 doing, the Court held that the requirement under California law that employers authorize and
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1 permit all employees to take rest period means that employers must relieve employees of all duties
2 and relinquish control over how employees spend their time which includes control over the
3 locations where employees may take their rest period. Employers cannot impose controls that
4 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
5 DEFENDANT's policy restricted PLAINTIFF and other AGGRIEVED EMPLOYEES from
6 unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFF
7 and other AGGRIEVED EMPLOYEES cannot leave the work premises during their rest period.

8 **D. Wage Statement Violations**

9 24. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
10 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
11 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
12 every employer shall furnish each of his or her employees with an accurate itemized wage
13 statement in writing showing, among other things, gross wages earned and all applicable hourly
14 rates in effect during the pay period and the corresponding amount of time worked at each hourly
15 rate. DEFENDANT violated Cal. Labor Code 226(a)(8) by failing to list the correct legal entity
16 that employed Plaintiff and other AGGRIEVED EMPLOYEES. Further, from time to time,
17 DEFENDANTS included Holiday hours into the computation of total hours worked for purposes
18 of Cal. Lab. Code § 226(a)(2), notwithstanding the fact that Holiday hours are not considered hours
19 worked. DEFENDANTS' inclusion of Holiday hours into the total hours worked in itemized wage
20 statements issued to PLAINTIFF and other AGGRIEVED EMPLOYEES violates Cal. Lab. Code
21 § 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT failed to
22 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
23 Labor Code 226 et seq. As a result, DEFENDANT from time to time provided PLAINTIFF and
24 the other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code §
25 226.

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1 **E. Untimely Payment of Wages Violations**

2 25. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED
3 EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFF
4 and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages,
5 including, but not limited to, overtime wages, minimum wages, meal period premium wages, and
6 rest period premium wages within permissible time period. Cal. Lab. Code § 210 provides:

7 [I]n addition to, and entirely independent and apart from, any other penalty
8 provided in this article, every person who fails to pay the wages of each
9 employee as provided in Sections. . . .204. . .shall be subject to a civil penalty as
10 follows: (1) For any initial violation, one hundred dollars (\$100) for each failure
11 to pay each employee; (2) For each subsequent violation, or any willful or
12 intentional violation, two hundred dollars (\$200) for each failure to pay each
13 employee, plus 25 percent of the amount unlawfully withheld.

14 26. DEFENDANT from time to time failed to timely pay PLAINTIFF and
15 AGGRIEVED EMPLOYEES at the close of the payroll period in accordance with Cal. Lab. Code
16 § 204, including but not limited to the “Retro Pay Flat” wage payment.

17 27. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
18 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
19 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
20 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
21 PLAINTIFF and AGGRIEVED EMPLOYEES whose employment has separated are entitled to
22 waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

23 **F. Unlawful Deductions Violations**

24 28. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer to
25 collect or receive from an employee any part of wages theretofore paid by said employer to said
26 employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
27 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
28 PLAINTIFF and AGGRIEVED EMPLOYEES, failed to disclose all aspects of the deductions

1 from compensation payable to PLAINTIFF and AGGRIEVED EMPLOYEES, and thereby failed
2 to pay these employees all wages due at each applicable pay period and upon termination.
3 PLAINTIFF and AGGRIEVED EMPLOYEES seek recovery of all illegal deductions from wages
4 according to proof, related penalties, interest, attorney fees and costs

5 **G. Unreimbursed Business Expense Violations**

6 29. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
7 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses incurred
8 by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging
9 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
10 are required to indemnify employees for all expenses incurred in the course and scope of their
11 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
12 her employee for all necessary expenditures or losses incurred by the employee in direct
13 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
14 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
15 believed them to be unlawful."

16 30. In the course of their employment PLAINTIFF and other AGGRIEVED
17 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
18 cellular phones as a result of and in furtherance of their job duties as employees for
19 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
20 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
21 PLAINTIFF and other AGGRIEVED EMPLOYEES were required by DEFENDANT to use
22 their personal cellular phones. As a result, in the course of their employment with
23 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
24 business expenses which included, but were not limited to, costs related to the use of their
25 personal cellular phones all on behalf of and for the benefit of DEFENDANT.

26 31. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally
27 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order
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1 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
2 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty
3 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
4 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
5 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for
6 the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide
7 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
8 records. The amount in controversy for PLAINTIFF individually does not exceed the sum or
9 value of \$75,000.

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

12 **[Cal. Lab. Code §§ 2698 et seq.]**

13 **(Alleged by PLAINTIFF against all Defendants)**

14 32. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
15 herein, the prior paragraphs of this Complaint.

16 33. PAGA is a mechanism by which the State of California itself can enforce state labor
17 laws through the employee suing under the PAGA who does so as the proxy or agent of the state's
18 labor law enforcement agencies. An action to recover civil penalties under PAGA is
19 fundamentally a law enforcement action designed to protect the public and not to benefit private
20 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
21 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA,
22 the California Legislature specified that "it was ... in the public interest to allow aggrieved
23 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
24 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

25 34. PLAINTIFF, and such persons that may be added from time to time who satisfy the
26 requirements and exhaust the administrative procedures under the Private Attorney General Act,
27 bring this Representative Action on behalf of the State of California with respect to herself and all
28

1 and all non-exempt, exempt, commission-based and/or piece-rate based employees who worked
2 for Defendant Cabe Brothers Rentals and/or Defendant Cabe Brothers in California (the
3 "AGGRIEVED EMPLOYEES").

4 35. On December 15, 2021, PLAINTIFF gave written notice by certified mail to the
5 Labor and Workforce Development Agency (the "Agency") and the employer of the specific
6 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
7 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period
8 for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
9 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
10 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
11 EMPLOYEES as herein defined.

12 36. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED
14 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other
15 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay PLAINTIFF
16 and other AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d) failed to pay
17 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked, and (e) failed to
18 provide accurate itemized wage statements, all in violation of the applicable Labor Code sections
19 listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203,
20 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194,
21 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 and the applicable Industrial Wage Order(s),
22 and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks
23 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
24 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
25 and the other AGGRIEVED EMPLOYEES.

26 37. Some or all of the conduct and violations alleged herein occurred during the PAGA
27 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
28

1 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
2 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
3 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
4 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor
5 Code violation committed by an employer—to **pursue penalties for all the Labor Code**
6 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

9 (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law,
10 including pursuant to Labor Code § 2699, *et seq.*;

11 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under
12 the Private Attorneys General Act; and

13 For such other relief as the Court deems just and proper.

14 Dated: June 7, 2022

JCL LAW FIRM, APC

16 

17 _____
18 Jean-Claude Lapuyade
19 Attorney for PLAINTIFF
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EXHIBIT 1



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December 15, 2021

Via Online Filing to LWDA and Certified Mail to Defendants
Labor and Workforce Development Agency
Online Filing

CABE BROTHERS RENTALS, LLC
c/o John R. Cabe
2895 Long Beach Blvd.
Long Beach, CA 90813
Via Certified Mail with Return Receipt
No. 7021 2720 0000 9972 5122

CABE BROTHERS
c/o John R. Cabe
2895 Long Beach Blvd.
Long Beach, CA 90806
Via Certified Mail with Return Receipt
No. 7021 2720 0000 9972 5139

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c/o John R. Cabe
2895 Long Beach Blvd.
Long Beach, CA 90813
Via Certified Mail with Return Receipt
No. 7021 2720 0000 9972 5122

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff MARIA G. GONZALEZ ROMERO (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendants CABE BROTHERS RENTALS, LLC (“Defendant Cabe Brothers Rentals”) and CABE BROTHERS (“Defendant Cabe Brothers”) (collectively, “Defendants”). Plaintiff was employed by Defendants in California from December 2016 to June of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Plaintiff also worked at times for Defendants as a commission-based sales employee entitled to be separately compensated for her non-productive time, including rest periods. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510,

512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt, exempt, commission-based and/or piece-rate based employees who worked for Defendant Cabe Brothers Rentals and/or Defendant Cabe Brothers in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

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Attorneys for Plaintiff MARIA G. GONZALEZ ROMERO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MARIA G. GONZALEZ ROMERO, an
individual, on behalf of herself and on behalf
of all persons similarly situated,

Plaintiff,

vs.

CABE BROTHERS RENTALS, LLC, a
California Limited Liability Company; CABE
BROTHERS, a California Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

- 1 6. FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN VIOLATION
3 OF CAL. LAB. CODE § 226;
4 7. FAILURE TO REIMBURSE EMPLOYEES
5 FOR REQUIRED EXPENSES IN
6 VIOLATION OF CAL. LAB. CODE § 2802;
7 and,
8 8. FAILURE TO PROVIDE WAGES WHEN
9 DUE IN VIOLATION OF CAL. LAB. CODE
10 §§ 201, 202 AND 203.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff Maria G. Gonzalez Romero (“PLAINTIFF”), an individual, on behalf of herself and all
13 other similarly situated current and former employees alleges on information and belief, except for her
14 own acts and knowledge which are based on personal knowledge, the following:

15 **THE PARTIES**

16 1. Defendant Cabe Brothers Rentals, LLC (“Defendant Cabe Brothers Rentals”) is a
17 California limited liability corporation that at all relevant times mentioned herein conducted and
18 continues to conduct substantial business in the state of California.

19 2. Defendant Cabe Brothers (“Defendant Cabe Brothers”) is a California corporation that at
20 all relevant times mentioned herein conducted and continues to conduct substantial business in the state
21 of California.

22 3. Defendants Cabe Brothers Rentals and Defendant Cabe Brothers were the joint employers
23 of PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF performed work for
24 respectively, and are therefore jointly responsible as employers for the conduct alleged herein, and are
25 therefore collectively referred to herein as "DEFENDANT" and/or “DEFENDANTS.”

26 4. PLAINTIFF was employed by DEFENDANT in California from December of 2016 to
27 June of 2021 and worked at times for DEFENDANT as a non-exempt employee, paid on an hourly basis,
28 and entitled to the legally required meal and rest periods and payment of minimum and overtime wages
due for all time worked. PLAINTIFF also worked at times for DEFENDANT as a commission-based
sales employee entitled to be separately compensated for her non-productive time, including rest periods.

5. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined as all individuals who are or previously were employed by Defendant Cabe Brothers Rentals and/or Defendant Cabe Brothers in California and classified as non-exempt, exempt, commission-based and/or piece-rate based employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

6. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which failed to lawfully compensate these employees. DEFENDANT's policy and practice alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

7. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively “DEFENDANT” and/or “DEFENDANTS”) are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

8. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

9. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

10. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work assignments while clocked out for what should be PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding

1 the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members, always to
2 the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and
3 CALIFORNIA CLASS Members are paid less than they would have been paid had they been paid for
4 actual recorded time rather than “rounded” time. As a result, PLAINTIFF and other CALIFORNIA
5 CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by
6 working without their time being correctly recorded and without compensation at the applicable rates.
7 DEFENDANT’s policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members
8 for all time worked, is evidenced by DEFENDANT’s business records.

9 **A. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick**
10 **Pay**

11 12. State law provides that employees must be paid overtime at one-and-one-half times their
12 “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS were compensated at an hourly
13 rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific elements of an
14 employee’s performance and/or commissions.

15 13. DEFENDANTS’ non-discretionary commission and bonus program provided the
16 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation when
17 the employees met the various performance goals set by DEFENDANT. However, when calculating the
18 regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA CLASS worked
19 overtime and earned non-discretionary bonus and/or commission wages, DEFENDANT failed to
20 accurately include the non-discretionary bonus compensation and/or commission wages as part of the
21 employees’ “regular rate of pay.”

22 14. Management and supervisors described the bonus and commissions programs and
23 commission compensation program to potential and new employees as part of the compensation package
24 for new and used car salespersons including PLAINTIFF and the CALIFORNIA CLASS. As a matter
25 of law, the incentive and commission compensation received by PLAINTIFFS and other CALIFORNIA
26 CLASS members must be included and correctly calculated into the “regular rate of pay” for purposes
27 of overtime compensation and sick pay. DEFENDANT’s failure to do so has resulted in

1 DEFENDANT's systematic underpayment of overtime compensation and sick pay to PLAINTIFF and
2 other CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates that
3 paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay for
4 the workweek in which the employee uses paid sick time, whether or not the employee actually works
5 overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the
6 incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation was
7 in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code
8 Sections 201, 202, 203 and/or 204.

9 15. In violation of the applicable sections of the California Labor Code and the requirements
10 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
11 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
12 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime, meal and rest
13 period premiums, and sick pay. This uniform policy and practice of DEFENDANTS is intended to
14 purposefully avoid the payment of the correct overtime and, meal and rest period premiums, and sick
15 pay as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair
16 advantage over competitors who complied with the law. To the extent equitable tolling operates to toll
17 claims by the CALIFORNIA CLASS members against DEFENDANTS, the CLASS PERIOD should
18 be adjusted accordingly.

19 **B. Commission-Based and Piece-Rate Violations**

20 16. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and the
21 CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those instances
22 where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate
23 basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately compensated for all
24 non-productive time at an hourly rate that is no less than the applicable minimum wage.
25 Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA CLASS were paid in
26 part on a commission and/or piece-rate basis, DEFENDANT failed to separately compensate
27 PLAINTIFF and the CALIFORNIA CLASS for all non-productive time, including but not limited to,

1 paid rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result,
2 PLAINTIFF and the CALIFORNIA CLASS forfeited minimum wages and overtime wages by
3 DEFENDANT'S failure to separately compensate their non-productive time at an hourly rate that is no
4 less than the applicable minimum wage.

5 **C. Meal and Rest Period Violations**

6 17. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
7 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks and
8 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
9 Members were required from time to time to perform work as ordered by DEFENDANT for more than
10 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to
11 time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal
12 period for some workdays in which these employees were required by DEFENDANT to work ten (10)
13 hours of work. DEFENDANT also engaged in the practice of rounding the meal period times to avoid
14 paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members. PLAINTIFF and other
15 members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation
16 and in accordance with DEFENDANT's corporate policy and practice.

17 18. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA
18 CLASS Members were also required from time to time to work in excess of four (4) hours without being
19 provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
20 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a
21 first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
22 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for
23 some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA
24 CLASS Members were also not provided with one-hour wages in lieu thereof. Additionally, the
25 applicable California Wage Order requires employers to provide employees with off-duty rest periods,
26 which the California Supreme Court defined as time during which an employee is relieved from all
27 work-related duties and free from employer control. In so doing, the Court held that the requirement

1 under California law that employers authorize and permit all employees to take rest period means that
2 employers must relieve employees of all duties and relinquish control over how employees spend their
3 time which includes control over the locations where employees may take their rest period. Employers
4 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five
5 minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA CLASS
6 Members from unconstrained walks and is unlawful based on DEFENDANT's rule which states
7 PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work premises during their
8 rest period.

9 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

10 19. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately record
11 and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these
12 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
13 required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning
14 the time during which an employee was subject to the control of an employer, including all the time the
15 employee was permitted or suffered to permit this work. DEFENDANT required these employees to
16 work off the clock without paying them for all the time they were under DEFENDANT's control,
17 including but not limited to, receiving and answering work-related communications. As such,
18 DEFENDANT knew or should have known that PLAINTIFF and the other members of the
19 CALIFORNIA CLASS were undercompensated for all time worked. As a result, PLAINTIFF and other
20 CALIFORNIA CLASS Members forfeited time worked by working without their time being accurately
21 recorded and without compensation at the applicable minimum wage and overtime wage rates. To the
22 extent that the time worked off the clock does not qualify for overtime premium payment, DEFENDANT
23 fails to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
24 1197, and 1197.1.

25 **E. Wage Statement Violations**

26 20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
27 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to

1 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
2 every employer shall furnish each of his or her employees with an accurate itemized wage statement in
3 writing showing, among other things, gross wages earned and all applicable hourly rates in effect during
4 the pay period and the corresponding amount of time worked at each hourly rate. DEFENDANT violated
5 Cal. Labor Code 226(a)(8) by failing to list the correct legal entity that employed Plaintiff and other
6 California Labor Sub-Class Members. Further, from time to time, DEFENDANTS included Holiday
7 hours into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2),
8 notwithstanding the fact that Holiday hours are not considered hours worked. DEFENDANTS' inclusion
9 of Holiday hours into the total hours worked in itemized wage statements issued to PLAINTIFF and
10 other CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2). Aside, from the violations
11 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement
12 that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from
13 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
14 statements which violated Cal. Lab. Code § 226.

15 **F. Untimely Payment of Wages Violations**

16 21. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
17 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid
18 not more than seven calendar days following the close of the payroll period. Cal. Lab. Code § 210
19 provides:

20 [I]n addition to, and entirely independent and apart from, any other penalty provided in this
21 article, every person who fails to pay the wages of each employee as provided in Sections. . .
22 .204. . .shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred
23 dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any
24 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
25 employee, plus 25 percent of the amount unlawfully withheld.

26 22. DEFENDANT from time to time failed to pay PLAINTIFF and members of the
27 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll period

1 in accordance with Cal. Lab. Code § 204(d), including but not limited to the “Retro Pay Flat” wage
2 payment.

3 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and other
4 members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties
5 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based
6 thereon alleges that such failure to pay sick pay at regular rate was willful, such that PLAINTIFF and
7 members of the CALIFORNIA CLASS whose employment has separated are entitled to waiting time
8 penalties pursuant to Cal. Lab. Code Sections 201-203.

9 **G. Unlawful Deductions Violations**

10 24. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer to collect
11 or receive from an employee any part of wages theretofore paid by said employer to said employee.”
12 DEFENDANT failed to pay all compensation due to PLAINTIFF and other CALIFORNIA LABOR
13 SUB-CLASS Members, made unlawful deductions from compensation payable to PLAINTIFF and
14 CALIFORNIA LABOR SUB-CLASS Members, failed to disclose all aspects of the deductions from
15 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, and thereby
16 failed to pay these employees all wages due at each applicable pay period and upon termination.
17 PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal
18 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

19 **H. Unreimbursed Business Expense Violations**

20 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
21 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by
22 the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their
23 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required
24 to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab.
25 Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
26 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
27

1 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
2 employee, at the time of obeying the directions, believed them to be unlawful."

3 26. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANT to use their own personal cellular
5 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are not
6 reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal
7 cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA
8 CLASS Members were required by DEFENDANT to use their personal cellular phones. As a result, in
9 the course of their employment with DEFENDANT, PLAINTIFF and other members of the
10 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited
11 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit of
12 DEFENDANT.

13 27. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally required
14 off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code
15 and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT did
16 not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and
17 also failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The nature of the
18 work performed by the PLAINTIFF did not prevent PLAINTIFF from being relieved of all of
19 PLAINTIFF's duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure
20 to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
21 records. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
22 \$75,000.

23 **JURISDICTION AND VENUE**

24 28. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
26 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT
27 pursuant to Cal. Code of Civ. Proc. § 382.

1 29. Venue is proper in this Court pursuant to California Code of Civil Procedure Sections 395
2 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i)
3 currently maintains and at all relevant times-maintained offices and facilities in this County and/or
4 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in
5 this County against members of the CALIFORNIA CLASS.

6 **THE CALIFORNIA CLASS**

7 30. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
8 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
9 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who
10 are or previously were employed by Defendant Cabe Brothers Rentals and/or Defendant Cabe Brothers
11 in California and classified as non-exempt, exempt, commission-based and/or piece-rate based
12 employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior
13 to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA
14 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
15 Members is under five million dollars (\$5,000,000.00).

16 31. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
17 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

18 32. DEFENDANT, as a matter of company policy, practice and procedure, and in violation
19 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and
20 the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice
21 whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFF and other
22 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required
23 employees to perform this work and permits or suffers to permit this work.

24 33. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
25 CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws.
26 The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the
27 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each

1 and every CALIFORNIA CLASS Member is paid as required by law. This common business practice
2 is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis
3 as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the
4 “UCL”) as causation, damages, and reliance are not elements of this claim.

5 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS
6 Members is impracticable.

7 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

- 8 a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code
9 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
10 in place company policies, practices and procedures that failed to record and pay
11 PLAINTIFF and the other members of the CALIFORNIA CLASS for all time
12 worked, including minimum wages owed and overtime wages owed for work
13 performed by these employees; and,
14 b) Committing an act of unfair competition in violation of the UCL, by failing to
15 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
16 with the legally required meal and rest periods.

17 36. This Class Action meets the statutory prerequisites for the maintenance of a Class
18 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 19 a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
20 joinder of all such persons is impracticable and the disposition of their claims as
21 a class will benefit the parties and the Court;
22 b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
23 raised in this Complaint are common to the CALIFORNIA CLASS will apply to
24 every member of the CALIFORNIA CLASS;
25 c) The claims of the representative PLAINTIFF are typical of the claims of each
26 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
27 of the CALIFORNIA CLASS, was classified as a nonexempt employee paid on

1 an hourly basis who was subjected to the DEFENDANT's deceptive practice and
2 policy which failed to provide the legally required meal and rest periods to the
3 CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF and
4 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of
5 DEFENDANT's employment practices. PLAINTIFF and the members of the
6 CALIFORNIA CLASS were and are similarly or identically harmed by the same
7 unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

- 8 d) The representative PLAINTIFF will fairly and adequately represent and protect
9 the interest of the CALIFORNIA CLASS, and has retained counsel who are
10 competent and experienced in Class Action litigation. There are no material
11 conflicts between the claims of the representative PLAINTIFF and the members
12 of the CALIFORNIA CLASS that would make class certification inappropriate.
13 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
14 CALIFORNIA CLASS Members.

15 37. In addition to meeting the statutory prerequisites to a Class Action, this action is properly
16 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 17 a) Without class certification and determination of declaratory, injunctive, statutory
18 and other legal questions within the class format, prosecution of separate actions
19 by individual members of the CALIFORNIA CLASS will create the risk of:
- 20 1) Inconsistent or varying adjudications with respect to individual members of
21 the CALIFORNIA CLASS which would establish incompatible standards
22 of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
23 2) Adjudication with respect to individual members of the CALIFORNIA
24 CLASS which would as a practical matter be dispositive of interests of the
25 other members not party to the adjudication or substantially impair or
26 impede their ability to protect their interests.

b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

- 1 A. Inconsistent or varying adjudications with respect to individual
2 members of the CALIFORNIA CLASS, which would establish
3 incompatible standards of conduct for the DEFENDANT; and/or,
4 B. Adjudications with respect to individual members of the
5 CALIFORNIA CLASS would as a practical matter be dispositive of
6 the interests of the other members not parties to the adjudication or
7 substantially impair or impede their ability to protect their interests;
8 3) In the context of wage litigation because a substantial number of individual
9 CALIFORNIA CLASS Members will avoid asserting their legal rights out
10 of fear of retaliation by DEFENDANT, which may adversely affect an
11 individual's job with DEFENDANT or with a subsequent employer, the
12 Class Action is the only means to assert their claims through a
13 representative; and,
14 4) A class action is superior to other available methods for the fair and
15 efficient adjudication of this litigation because class treatment will obviate
16 the need for unduly and unnecessary duplicative litigation that is likely to
17 result in the absence of certification of this action pursuant to Cal. Code of
18 Civ. Proc. § 382.

19 38. This Court should permit this action to be maintained as a Class Action pursuant to Cal.
20 Code of Civ. Proc. § 382 because:

- 21 a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any
22 question affecting only individual CALIFORNIA CLASS Members because the
23 DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
24 b) A Class Action is superior to any other available method for the fair and efficient adjudication
25 of the claims of the members of the CALIFORNIA CLASS because in the context of
26 employment litigation a substantial number of individual CALIFORNIA CLASS Members will
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1 avoid asserting their rights individually out of fear of retaliation or adverse impact on their
2 employment;

3 c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all
4 members of the CALIFORNIA CLASS before the Court;

5 d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective
6 and economic legal redress unless the action is maintained as a Class Action;

7 e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts
8 of unfair competition, statutory violations and other improprieties, and in obtaining adequate
9 compensation for the damages and injuries which DEFENDANT's actions have inflicted upon
10 the CALIFORNIA CLASS;

11 f) There is a community of interest in ensuring that the combined assets of DEFENDANT are
12 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
13 sustained;

14 g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA
15 CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA
16 CLASS as a whole;

17 h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records
18 of DEFENDANT; and,

19 i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid
20 conclusion to all litigation of all wage and hour related claims arising out of the conduct of
21 DEFENDANT as to the members of the CALIFORNIA CLASS.

22 39. DEFENDANT maintains records from which the Court can ascertain and identify by job
23 title each of DEFENDANT's employees who have been intentionally subjected to DEFENDANT's
24 company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the
25 Complaint to include any additional job titles of similarly situated employees when they have been
26 identified.

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41. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

43. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable.

44. Common questions of law and fact exist as to members of the CALIFORNIA LABOR SUB-CLASS, including, but not limited, to the following:

- a) Whether DEFENDANT unlawfully failed to correctly calculate and pay compensation due to members of the CALIFORNIA LABOR SUBCLASS for missed meal and rest breaks in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- b) Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- e) Whether DEFENDANT's conduct was willful.

45. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUBCLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;

- 1 e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is
2 discharged or quits from employment, the employer must pay the employee all wages due
3 without abatement, by failing to tender full payment and/or restitution of wages owed or in the
4 manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS
5 who have terminated their employment; and,
- 6 f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
7 LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job
8 duties.

9 46. This Class Action meets the statutory prerequisites for the maintenance of a Class Action
10 as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 11 a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the
12 joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the
13 disposition of their claims as a class will benefit the parties and the Court;
- 14 b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this
15 Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every
16 member of the CALIFORNIA LABOR SUB-CLASS;
- 17 c) The claims of the representative PLAINTIFF are typical of the claims of each member of the
18 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the
19 CALIFORNIA LABOR SUB-CLASS, was a non-exempt and/or commission-based employee
20 who was subjected to the DEFENDANT's practice and policy which failed to pay the correct
21 amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained
22 economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
23 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
24 harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT;
25 and;
- 26 d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of
27 the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and
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1 experienced in Class Action litigation. There are no material conflicts between the claims of the
2 representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that
3 would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-
4 CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

5 47. In addition to meeting the statutory prerequisites to a Class Action, this action is properly
6 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

7 a) Without class certification and determination of declaratory, injunctive, statutory and other legal
8 questions within the class format, prosecution of separate actions by individual members of the
9 CALIFORNIA LABOR SUB-CLASS will create the risk of:

10 1) Inconsistent or varying adjudications with respect to individual members of the
11 CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of
12 conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

13 2) Adjudication with respect to individual members of the CALIFORNIA LABOR
14 SUB-CLASS which would as a practical matter be dispositive of interests of the other
15 members not party to the adjudication or substantially impair or impede their ability to
16 protect their interests.

17 b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on
18 grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate
19 class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that
20 DEFENDANT fails to pay all wages due. Including the correct wages for all time worked by
21 the members of the CALIFORNIA LABOR SUBCLASS as required by law;

22 c) Common questions of law and fact predominate as to the members of the CALIFORNIA
23 LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed
24 above, and predominate over any question affecting only individual CALIFORNIA LABOR
25 SUB-CLASS Members, and a Class Action is superior to other available methods for the fair
26 and efficient adjudication of the controversy, including consideration of:
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- 1) The interests of the members of the CALIFORNIA LABOR SUBCLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

48. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- 1 a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS
2 predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS
3 Members;
- 4 b) A Class Action is superior to any other available method for the fair and efficient adjudication
5 of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the
6 context of employment litigation a substantial number of individual CALIFORNIA LABOR
7 SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or
8 adverse impact on their employment;
- 9 c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical
10 to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- 11 d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to
12 obtain effective and economic legal redress unless the action is maintained as a Class Action;
- 13 e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts
14 of unfair competition, statutory violations and other improprieties, and in obtaining adequate
15 compensation for the damages and injuries which DEFENDANT's actions have inflicted upon
16 the CALIFORNIA LABOR SUB-CLASS;
- 17 f) There is a community of interest in ensuring that the combined assets of DEFENDANT are
18 sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS
19 for the injuries sustained;
- 20 g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA
21 LABOR SUB-CLASS, thereby making final classwide relief appropriate with respect to the
22 CALIFORNIA LABOR SUBCLASS as a whole;
- 23 h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the
24 business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all
25 CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time
26 during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
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- 1 i) Class treatment provides manageable judicial treatment calculated to bring an efficient and
2 rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct
3 of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

4 **FIRST CAUSE OF ACTION**

5 **For Unlawful Business Practices**

6 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

7 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

8 49. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
9 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

10 50. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code §
11 17021.

12 51. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair
13 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
14 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

15 Any person who engages, has engaged, or proposes to engage in unfair
16 competition may be enjoined in any court of competent jurisdiction. The
17 court may make such orders or judgments, including the appointment of
18 a receiver, as may be necessary to prevent the use or employment by any
19 person of any practice which constitutes unfair competition, as defined in
20 this chapter, or as may be necessary to restore to any person in interest
21 any money or property, real or personal, which may have been acquired
22 by means of such unfair competition.

23 Cal. Bus. & Prof. Code § 17203.

24 52. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
25 business practice which violates California law, including but not limited to, the applicable Industrial
26 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections
27 201, 202, 203, 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor
28 Standards Act and federal regulations promulgated thereunder, for which this Court should issue
declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary

1 to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages
2 wrongfully withheld.

3 53. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair in that
4 these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or substantially
5 injurious to employees, and were without valid justification or utility for which this Court should issue
6 equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code,
7 including restitution of wages wrongfully withheld.

8 54. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent
9 in that DEFENDANT's policy and practice failed to provide the legally mandated meal and rest periods,
10 the required amount of compensation for missed meal and rest periods and overtime and minimum
11 wages owed, failed to timely pay wages, and failed to reimburse all necessary business expenses
12 incurred, and failed to provide Fair Labor Standards Act overtime wages due for overtime worked as a
13 result of failing to include non-discretionary incentive compensation into their regular rates of pay for
14 purposes of computing the proper overtime pay due to a business practice that cannot be justified,
15 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation
16 of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
17 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

18 55. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
19 deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members of
20 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

21 56. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
22 deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally required
23 meal breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
24 Lab. Code §§ 226.7 and 512.

25 57. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
26 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal period
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1 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in
2 which a second off-duty meal period was not timely provided for each ten (10) hours of work.

3 58. PLAINTIFF further demands on behalf of herself and each member of the CALIFORNIA
4 LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid rest period was
5 not timely provided as required by law.

6 59. By and through the unlawful and unfair business practices described herein,
7 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other
8 members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived
9 them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
10 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against
11 competitors who comply with the law.

12 60. All the acts described herein as violations of, among other things, the Industrial Welfare
13 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
14 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
15 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
16 Bus. & Prof. Code §§ 17200, *et seq.*

17 61. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
18 seek such relief as may be necessary to restore to them the money and property which DEFENDANT
19 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been
20 deprived, by means of the above described unlawful and unfair business practices, including earned but
21 unpaid wages for all time worked.

22 62. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
23 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
24 that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and
25 unfair business practices in the future.

26 63. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
27 and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT.

1 Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful
2 and unfair business practices described herein, PLAINTIFF and the other members of the
3 CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm
4 unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business
5 practices.

6 **SECOND CAUSE OF ACTION**

7 **For Failure To Pay Minimum Wages**

8 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

11 64. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS,
12 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
13 Complaint.

14 65. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a
15 claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
16 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and
17 pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

18 66. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,
19 an employer must timely pay its employees for all hours worked.

20 67. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
21 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
22 minimum so fixed is unlawful.

23 68. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
24 minimum wage compensation and interest thereon, together with the costs of suit.

25 69. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members
26 of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work.
27 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny timely

1 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS.

3 70. DEFENDANT's unlawful wage and hour practices manifested, without limitation,
4 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy
5 and practice that denies accurate compensation to PLAINTIFF and the other members of the
6 CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

7 71. In committing these violations of the California Labor Code, DEFENDANT inaccurately
8 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
9 and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal
10 attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor
11 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

12 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the
14 correct minimum wage compensation for their time worked for DEFENDANT.

15 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required,
16 permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work without
17 paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA
18 LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR
19 SUB-CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all
20 earned wages.

21 74. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
22 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS for the true time they
23 worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have suffered
24 and will continue to suffer an economic injury in amounts which are presently unknown to them and
25 which will be ascertained according to proof at trial.

26 75. DEFENDANT knew or should have known that PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked.

1 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
2 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT
3 perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA
4 LABOR SUB-CLASS the correct minimum wages for their time worked.

5 76. In performing the acts and practices herein alleged in violation of California labor laws,
6 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time
7 worked and provide them with the requisite compensation, DEFENDANT acted and continues to act
8 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
9 CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the
10 consequences to them, and with the despicable intent of depriving them of their property and legal rights,
11 and otherwise causing them injury in order to increase company profits at the expense of these
12 employees.

13 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as
15 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
16 Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined
17 to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their
18 employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
19 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties
20 are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
21 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
22 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

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1 and practice that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA
2 LABOR SUB-CLASS Members and denied accurate compensation to PLAINTIFF and the other
3 members of the CALIFORNIA LABOR SUBCLASS for overtime worked, including, the overtime
4 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or
5 forty (40) hours in any workweek.

6 85. In committing these violations of the California Labor Code, DEFENDANT inaccurately
7 recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFF and other
8 CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid the
9 payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial
10 Welfare Commission requirements and other applicable laws and regulations.

11 86. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full
13 compensation for overtime worked.

14 87. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
15 overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF and the
16 other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid collective bargaining
18 agreement that would preclude the causes of action contained herein this Complaint. Rather,
19 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR SUB-CLASS based
20 on DEFENDANT's violations of nonnegotiable, non-waiveable rights provided by the State of
21 California.

22 88. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
23 members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that
24 they are entitled to, constituting a failure to pay all earned wages.

25 89. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of the
26 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess of
27 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though

1 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were required to work,
2 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
3 evidenced by DEFENDANT's business records and witnessed by employees.

4 90. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation
5 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUBCLASS for the true amount
6 of time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
7 have suffered and will continue to suffer an economic injury in amounts which are presently unknown
8 to them and which will be ascertained according to proof at trial.

9 91. DEFENDANT knew or should have known that PLAINTIFF and the other members of
10 the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.
11 DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay
12 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT
13 perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA
14 LABOR SUB-CLASS for overtime worked.

15 92. In performing the acts and practices herein alleged in violation of California labor laws,
16 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
17 worked and provide them with the requisite overtime compensation, DEFENDANT acted and continues
18 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
19 CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights, or
20 the consequences to them, and with the despicable intent of depriving them of their property and legal
21 rights, and otherwise causing them injury in order to increase company profits at the expense of these
22 employees.

23 93. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as well as
25 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
26 Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is
27 determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their

1 employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
2 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties
3 are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
4 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
5 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

6 **FOURTH CAUSE OF ACTION**

7 **For Failure to Provide Required Meal Periods**

8 **[Cal. Lab. Code §§ 226.7 & 512]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

11 94. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
12 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
13 Complaint.

14 95. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to
15 provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
16 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
17 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not
18 prevent these employees from being relieved of all of their duties for the legally required off-duty meal
19 periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR
20 SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their
21 meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
22 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work
23 is evidenced by DEFENDANT's business records from time to time. Further, DEFENDANT failed to
24 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some
25 workdays in which these employees were required by DEFENDANT to work ten (10) hours of work
26 from time to time. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
27

1 CLASS therefore forfeited meal breaks without additional compensation and in accordance with
2 DEFENDANT's strict corporate policy and practice.

3 96. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC
4 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUBCLASS Members
5 who were not provided a meal period, in accordance with the applicable Wage Order, one additional
6 hour of compensation at each employee's regular rate of pay for each workday that a meal period was
7 not provided.

8 97. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
9 LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek
10 all wages earned and due, interest, penalties, expenses and costs of suit.

11 **FIFTH CAUSE OF ACTION**

12 **For Failure to Provide Required Rest Periods**

13 **[Cal. Lab. Code §§ 226.7 & 512]**

14 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
15 **Defendants)**

16 98. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
17 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
18 Complaint.

19 99. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time
20 to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
21 Further, these employees from time to time were denied their first rest periods of at least ten (10) minutes
22 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
23 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third
24 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to
25 time. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided
26 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
27

CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

100. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUBCLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

101. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

102. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

103. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

(1) gross wages earned,

(2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

(3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

- 1 (4) all deductions, provided that all deductions made on written orders of the employee
2 may be aggregated and shown as one item,
3 (5) net wages earned,
4 (6) the inclusive dates of the period for which the employee is paid,
5 (7) the name of the employee and his or her social security number, except that by January
6 1, 2008, only the last four digits of his or her social security number or an employee
7 identification number other than a social security number may be shown on the
8 itemized statement,
9 (8) the name and address of the legal entity that is the employer, and
10 (9) all applicable hourly rates in effect during the pay period and the corresponding number
11 of hours worked at each hourly rate by the employee.

12 104. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements
14 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
15 provides that every employer shall furnish each of his or her employees with an accurate itemized wage
16 statement in writing showing, among other things, gross wages earned and all applicable hourly rates in
17 effect during the pay period and the corresponding amount of time worked at each hourly rate. Aside,
18 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
19 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
20 DEFENDANT violated Cal. Labor Code 226(a)(8) by failing to list the correct legal entity that employed
21 Plaintiff and other CALIFORNIA LABOR SUB-CLASS Members. Further, from time to time,
22 DEFENDANTS included Holiday hours into the computation of total hours worked for purposes of Cal.
23 Lab. Code § 226(a)(2), notwithstanding the fact that Holiday hours are not considered hours worked.
24 DEFENDANTS' inclusion of Holiday hours into the total hours worked in itemized wage statements
25 issued to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members violates Cal. Lab.
26 Code § 226(a)(2). As a result, DEFENDANT from time to time provided PLAINTIFF and the other
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1 members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab.
2 Code § 226.

3 105. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226,
4 causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for
6 all missed meal and rest breaks and the amount of employment taxes which were not properly paid to
7 state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and
8 the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages
9 of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
10 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an
11 amount according to proof at the time of trial (but in no event more than four thousand dollars
12 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS
13 herein).

14 **SEVENTH CAUSE OF ACTION**

15 **For Failure to Reimburse Employees for Required Expenses**

16 **[Cal. Lab. Code § 2802]**

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
18 **Defendants)**

19 106. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and
20 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

21 107. Cal. Lab. Code § 2802 provides, in relevant part, that: An employer shall indemnify his
22 or her employee for all necessary expenditures or losses incurred by the employee in direct consequence
23 of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
24 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
25 unlawful.

26 108. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
27 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUBCLASS members for

1 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.
2 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
3 for expenses which included, but were not limited to, costs related to using their personal cellular phones
4 on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA
5 LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cellular phones
6 in order to perform work related job tasks. DEFENDANT's policy and practice was to not reimburse
7 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using
8 their personal cellular phones for DEFENDANT within the course and scope of their employment for
9 DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is
10 estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses
11 were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
12 members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA
13 LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and
14 regulations of California.

15 109. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by
16 herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for
17 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate
18 and costs under Cal. Lab. Code § 2802.

19 **EIGHTH CAUSE OF ACTION**

20 **For Failure to Pay Wages When Due**

21 **[Cal. Lab. Code §§ 201, 202, 203]**

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
23 **and Against All Defendants)**

24 110. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS, reallege
25 and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

26 111. Cal. Lab. Code § 200 provides, in relevant part, that:

27 As used in this article:

1 (a) "Wages" includes all amounts for labor performed by employees of every
2 description, whether the amount is fixed or ascertained by the standard of time, task,
3 piece, Commission basis, or other method of calculation.

4 (b) "Labor" includes labor, work, or service whether rendered or performed under
5 contract, subcontract, partnership, station plan, or other agreement if the labor to be
6 paid for is performed personally by the person demanding payment.

7 112. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an
8 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

9 113. Cal. Lab. Code § 202 provides, in relevant part, that:

10 If an employee not having a written contract for a definite period quits his or her
11 employment, his or her wages shall become due and payable not later than 72 hours
12 thereafter, unless the employee has given 72 hours previous notice of his or her
13 intention to quit, in which case the employee is entitled to his or her wages at the time
14 of quitting. Notwithstanding any other provision of law, an employee who quits
15 without providing a 72- hour notice shall be entitled to receive payment by mail if he
16 or she so requests and designates a mailing address. The date of the mailing shall
17 constitute the date of payment for purposes of the requirement to provide payment
18 within 72 hours of the notice of quitting.

19 114. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-CLASS
20 Members' employment contract.

21 115. Cal. Lab. Code § 203 provides, in relevant part, that:

22 If an employer willfully fails to pay, without abatement or reduction, in accordance
23 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged
24 or who quits, the wages of the employee shall continue as a penalty from the due date
25 thereof at the same rate until paid or until an action therefor is commenced; but the
26 wages shall not continue for more than 30 days.

27 116. The employment of PLAINTIFF and many CALIFORNIA LABOR SUBCLASS
28 Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by
law.

117. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of
the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have not been
fully paid their wages due to them, PLAINTIFF demands thirty days of pay as penalty for not paying all
wages due at time of termination for all employees who terminated employment during the
CALIFORNIA LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages
due, plus interest and statutory costs as allowed by law.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as
3 follows:

4 1. On behalf of the CALIFORNIA CLASS:

- 5 A. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as
6 a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 7 B. An order temporarily, preliminarily and permanently enjoining and restraining
8 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 9 C. An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from
10 compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS;
11 and,
- 12 D. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
13 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to
14 the other members of the CALIFORNIA CLASS.

15 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 16 A. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes
17 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant
18 to Cal. Code of Civ. Proc. § 382;
- 19 B. Compensatory damages, according to proof at trial, including compensatory damages for
20 minimum and overtime compensation due PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR
22 SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 23 C. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
24 violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA
25 LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an
26 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of
27 Cal. Lab. Code § 226;

- 1 D. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
2 applicable IWC Wage Order;
- 3 E. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- 4 F. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR
5 SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,
- 6 G. The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a
7 penalty from the due date thereof at the same rate until paid or until an action therefore is
8 commenced, in accordance with Cal. Lab. Code § 203.

9 3. On all claims:

- 10 A. An award of interest, including prejudgment interest at the legal rate;
- 11 B. Such other and further relief as the Court deems just and equitable; and,
- 12 C. An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
13 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

14
15 Dated: December 15, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

16
17 By: 
Jean-Claude Lapuyade
18 Attorneys for PLAINTIFF

19
20 **DEMAND FOR A JURY TRIAL**

21 PLAINTIFF demands a jury trial on issues triable to a jury.

22
23 Dated: December 15, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

24
25 By: 
Jean-Claude Lapuyade
26 Attorneys for PLAINTIFF

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Cabe Brothers Rentals, LLC &
Cabe Brothers
40 John R. Cabe
2895 Long Beach Blvd.
Long Beach, CA 90806



9590 9402 7020 1225 2856 62

2. Article Number (Transfer from service label)

7021 2720 0000 9972 5139

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

M E M

☐ Agent☐ Addressee

B. Received by (Printed Name)

BLS CLP

C. Date of Delivery

12-17-21

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

002-276 1215.21

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☐ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery

1 Mail

1 Mail Restricted Delivery
(500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restrict
Delivery☐ Signature Confirmation™☐ Signature Confirmation
Restricted Delivery

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Cabe Brothers Rentals, LLC & Cabe
Brothers
c/o John R. Cabe
2895 Long Beach Blvd.
Long Beach, CA 90813



9590 9402 7020 1225 2856 79

2. Article Number (Transfer from service label)

7021 2720 0000 9972 5122

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X M E M

☐ Agent

☐ Addressee

B. Received by (Printed Name)

615 C19

C. Date of Delivery

12-17-21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

002-216 12-15-21

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☐ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

1 Mail

1 Mail Restricted Delivery

(over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt